IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3507 OF 1991

R.A.Dias,
Age about 61 years,
Occ : Businessman, residing at No.5,
Dr.Coyaji Road, Pune 411 001. .. Petitioner
(Org.Appellant/
Plaintiff.)

Vs.

1. Smt.Dagadanbai John Bhosale,
(Shantabai alias Dagadan)
age about 61 years,
Occ: Maid Servant,

2. Sushila Anand Kadam,
Age about 41 years,
Occ : Household,
Both residing at No.5,
Dr.Coyaji Road, Pune 411 001. .. Respondents
(Org.Respondent/
Defendants.)

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Shri G.M.Khambate for the Petitioner.

None present for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 13th SEPTEMBER, 2004.

ORAL JUDGMENT :

1. Heard the learned advocate for the petitioner. None present for the respondents, though served. Perused the records.

2. The petitioner challenges the judgment and

orders passed by the Courts below dismissing the suit filed for eviction of the respondents on the ground as provided under Section 13(1)(f) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter called as "the said Act".

3. Few facts which are relevant for the decision are that, the petitioner is a tenant in relation to the premises situated on the ground floor of House No.5, Dr.Coyaji Road, Pune. The said premises were provided with a servant quarters attached thereto and the said servant quarters form the suit premises in the case in hand. According to the petitioner, the suit premises were allowed to be occupied by the respondent No.1 in her capacity as the petitioner's servant without any payment of rent since December, 1976, whereas, it is the case of the respondents that they are in occupation of the suit premises since 1966 by virtue of a lease/license granted to them by the earlier tenant Shri Thomas Mathai in respect of the premises which are now in occupation of the petitioner.

4. Both the Courts below, based on the statement of the respondent No.2 as well as certain receipts stated to have been issued in favour of the respondents in relation to the purchase of a Radio and

other items by the respondents disclosing the address of the respondents as that of the suit premises for the period prior to the year 1976, have held that the evidence discloses that the occupation of the respondents in the suit premises was prior to the year 1976, and therefore, the theory of the petitioner having allotted the suit premises as servant quarters to the respondent No.1 could not be believed, and on that count, the suit was dismissed and the said decree of dismissal of the suit has been confirmed by the lower appellate Court.

5. Referring to Sections 14 and 15 of the said Act and the undisputed fact that the premises which are in occupation of the petitioner are in the capacity as the lessee of the landlord and considering that the suit premises form servant quarters of the said premises in occupation of the petitioner along with a clear admission on the part of the respondent No.2 that the respondents never paid any rent either to Shri Thomas Mathai, earlier lessee of the said premises or to the petitioner, it is sought to be argued that the same clearly establishes that the respondents are not tenants or protected licensees in relation to the suit premises. It was further submitted by the learned advocate for the petitioner that even assuming that the respondent No.1 was

inducted in the suit premises as the licensee by the original tenant Shri Mathai, once the tenancy of Mathai was terminated and there being no plea raised by the respondents about direct tenant-landlord relationship between the respondents and the landlord of the said premises, there was absolutely no material on record to hold that the respondent No.1 is tenant in occupation or protected licensee in relation to the suit premises. It was also further submitted that though the claim regarding the respondent No.1 being licensee in relation to the suit premises pursuant to the alleged license granted by the earlier tenant Mathai was sought to be raised in defence in the suit for eviction, the respondent No.1 never entered the witness box to establish the same. The finding arrived at by the Courts below about the occupation of the respondent No.1 being protected licensee under the said Act is, therefore, not only contrary to the materials on record but also totally perverse, and therefore, warrants interference in exercise of writ jurisdiction.

6. As rightly submitted by the learned advocate for the petitioner, it is evident on the face of record that the respondent No.1 did not appear in the witness box to defend the case in relation to her eviction from the suit premises even though it was a

specific case of the petitioner that she was allowed to occupy the suit premises in her capacity as the servant of the petitioner. The testimony of the respondent No.2 also clearly discloses a clear admission about the non payment of any rent either to the petitioner or to Mathai, the earlier tenant. In fact, the said statement is totally contrary to the pleadings of the respondent No.1 in the written statement wherein it was specific case of the respondent No.1 that the respondent No.1 used to pay Rs.10/- per month as rent-cum-license fee to Shri Thomas Mathai. Curiously, the respondents had not disclosed any quantum of rent that had ever been agreed upon or had been actually paid by the respondents to the petitioner in the said written statement. All throughout, it was the case of the respondents that they were inducted in the suit premises by the said earlier tenant Mathai since 1966 as licensees/ lessees and they continued to occupy the same even after termination of lease of Mathai and the premises came to be occupied by the respondent No.1 as the lessee of the landlord.

7. Section 15A(1) of the said Act provides that notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or any in contract, where any person

is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation. In other words, the person who was in occupation of the premises comprised not less than a room on 1st February 1973 in capacity as licensee, were given the status of a tenant of the landlord from the said date in relation to the premises in his occupation.

8. Section 14(1) of the said Act provides that when the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before the 1st day of February 1973 shall subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant, if the tenancy had continued. In other words, persons who were sub-tenants in respect of any premises on or before 1st February 1973 were granted the status of being tenants of the landlord in case tenancy of the original tenant was to be determined for any reason.

9. Applying the abovereferred provisions of law

to the facts of the case, as rightly submitted by the learned advocate for the petitioner, even assuming that the respondent No.1 was licensee of the earlier tenant Mathai since 1966, once the tenancy of Mathai had come to an end, the respondents could have claimed to have become tenants of the landlord from the said date on the day the tenancy of Mathai had come to an end. However, that is not the case of the respondents. On the contrary, the respondents' contention was that they were tenants of Mathai and at the same time, it is undisputed fact that the respondents never paid any rent either to Mathai or to the petitioner. It is not also the case of the respondents that they have paid any rent to the landlord of the premises. Being so, the facts on record were not sufficient to arrive at any finding to ensure any protection to the occupants in relation to the suit premises. On the contrary, once it was established that the petitioner is the lessee in respect of the said premises and the suit premises were forming servant quarters in relation to the said premises in occupation of the petitioner, and the respondents having not been able to establish the claim of tenancy in respect of the suit premises, the Courts below ought to have held that the petitioner has been able to establish the case for eviction of the respondents from the suit premises, and the ground

for eviction under Section 13(1)(f) of the said Act having been made out for the purpose of eviction of the respondents from the suit premises, certainly the findings arrived at by the Courts below are contrary to the materials on record as well as perverse as has been rightly submitted by the learned advocate for the petitioner.

10. In the result, the petition succeeds and the impugned judgment and orders are hereby quashed and set aside, and the suit filed by the petitioner/ original plaintiff is hereby ordered to be decreed in terms of prayer clause (iii) subject to that the respondents shall deliver vacant and peaceful possession of the suit premises on or before six months from today. Rule is made absolute accordingly with costs.